
REVIEW OF THE CONSTITUTION

To: **Council – 25 February 2016**

By: **Chairman of the Standards Committee
Director of Corporate Governance and Monitoring Officer**

Classification: **Unrestricted**

Ward: **Applies to all wards.**

Summary: **This report outlines the proposed changes to the Council's Constitution following a review undertaken by the Constitutional Review Working Party and the Standards Committee.**

For Decision

1.0 Introduction and Background

- 1.1 Following the LGA Peer Review it was identified that the Constitution should be reviewed and updated to make it clearer and easier to understand and to reflect current practices as well as amend legislative provisions where appropriate.
- 1.2 The Council commissioned Essex Legal Services to undertake this review in conjunction with council officers. The work undertaken by both Essex Legal Services and Council Officers has, in accordance with the Constitution, been reviewed in detail by the Constitutional Review Working Party at a number of recent meetings. This has involved an often line-by-line review of the several parts of the Constitution and constructive discussion on proposed changes.
- 1.3 The Standards Committee considered the amended Member/Officer protocol, Parts 1 (Summary of the Constitution) and Part 2 (Articles of the Constitution) and Part 4 (Rules of Procedure) and recommended them to Council at its meeting on 15 September 2015.
- 1.4 The Standards Committee considered the Access to Information Rules, Article 14 (Legal and Finance), further amendments to the Rules of Procedure, the Scheme of Delegations, Overview and Scrutiny Procedure Rules, Petitions Scheme and the Members Allowance Scheme and recommended them to Council at its meeting on 21 January 2016.

2.0 The Current Situation

- 2.1 Attached at Annexes 1-8 are the revised sections of the Constitution with tracked changes as recommended by the Standards Committee to Council for adoption.
- 2.2 Within the revised Constitution there are many typographical changes and style changes to aid understanding. These style changes include for example, the use of 'Cabinet' rather than 'Executive' where appropriate and the use of 'residents' rather than 'citizens'. Changes have also been made to reflect changes in the law, for example the removal of references to the previous Standards regime and the power to suspend Councillors. The opportunity has also been taken to delete reference to

out of date documents and processes such as the Local Agenda 21 strategy and the Best Value regime.

2.3 What follows is a short commentary on the material changes to each section of the Constitution.

3.0 Changes to Part 1 – Summary and Explanation (Annex 1)

3.1 The Council's Constitution

The history of constitutions in Thanet District Council has been deleted because it is not relevant.

3.2 8.0 Regulatory and other Committees

The list of the Regulatory and other Committees has been deleted from this section, as they are included in Part 3 of the Constitution in detail.

4.0 Changes to Part 2 Articles of the Constitution (Annex 1)

4.1 Article 2 – Members of the Council

2.0 The role descriptions have been moved from here to go into a separate annexe.

4.2 Article 12 – Officers

12.0 The tables describing the management structure now reflect the current CMT roles.

4.3 12.4 The reference to an elected Mayor has been removed. Were there an elected Mayor, the constitution would have to be amended comprehensively.

4.4 Article 13 – Decision Making

13.03 The detailed guidance on key decisions is contained in Part 4 rather than being repeated here.

4.5 Article 14 – Finance, Contracts and Legal matters

14.03 The powers of the Head of Legal Services and Monitoring Officer have been widened to include a specific authority to settle legal proceedings and power has been given to other Directors to authorise legal proceedings within their areas of responsibility.

This corrects a gap in the delegations which has occurred where functions have moved between Directorates.

5.0 Changes to Part 3 – Responsibility for Functions (Delegation Scheme) (Annex 2)

5.1 The name of this section has been amended to 'delegation scheme'.

5.2 This part of the Constitution has been fundamentally amended although the actual functions delegated have not changed. The key difference is that the new scheme specifies those functions which have been reserved for committees, the Leader, cabinet or portfolio holders with the balance being delegated to the Directors (who may then sub-delegate in their own scheme of delegations).

5.3 The changes provide simplicity and clarity and avoids the need to specify all legislation and individual functions and responsibilities. Any legislative changes will be accommodated by the generic nature of the delegations. If new legal powers are given to the Council, the Council will only need to determine which powers are reserved to the Council or its Committees.

5.4 It is important to note that whilst the Leader's scheme of delegations is included in this draft constitution for completeness, the Council cannot decide how the Leader should exercise their executive functions.

5.5 Given the fundamental changes, a marked-up copy of this part of the constitution has not been provided. The track changes shown in this part of the constitution reflect the changes in the document during its journey through the Constitution Review Working Party and the Standards Committee.

5.6 Under each individual committee the reference to the size of membership has been removed to reflect the fact that the number of members may change on changes in political proportionality.

6.0 Changes to Part 4 – Rules on Procedure (Annex 3)

6.1 Council Procedure Rules

1.2 Clarity is provided on the timing of Annual meetings and the change when 'all-out' elections are held.

6.2 2.4 There is a new requirement for the Leader to give prior written notice to opposition group leaders of his oral report to Council.

6.3 3.1 The notice required for Motions on Notice is described in detail to allow their inclusion in the agenda.

6.4 4.5 This provision has been removed, since the political groups determine their representation on committees and are not required to be endorsed.

6.5 6.3 A reference is made to the convention that the chair of the Overview and Scrutiny Panel is not from the ruling group on the Council. It was felt that this convention is important to provide independence to the overview and scrutiny process.

6.6 14.10 The rules regarding written questions has been made more specific including the need to take advice from the Monitoring Officer when deciding not to answer a question.

6.7 17.7 The requirement to give notice in finance decisions of a councillor's council tax arrears has been added.

7.0 Changes to Access to Information Procedure Rules (Annex 4)

7.1 There are minor changes including specifically referring to the Monitoring Officer as a named officer to assist with clarity on reporting.

8.0 Changes to Overview and Scrutiny Procedure Rules (Annex 5)

8.1 There are a number of changes to the wording in these rules and how the rules are presented, to make them easier to understand and digest.

8.2 13.0 The Chairman is to determine the exceptional circumstances which might justify the non-attendance at the Panel of a member or officer.

8.3 15.0 (f) It is made clear that only witnesses who reported to the decision maker will be invited to the call-in meeting.

8.4 15.0 (g) and (i) These changes provide clarity on the Panel's power to consider a call-in itself or delegate that function to the Council.

9.0 Petitions from the Public (Annex 6)

9.1 The amendment provides for petitions which relate to an existing consultation exercise to be forwarded to the appropriate officer, rather than being dealt with under this petition scheme.

10.0 Protocol on Member/Officer Relations (Annex 7)

10.1 Whilst broadly based on the current document, this has been tidied up and amended to add clarity on roles and relationships.

11.0 Options

11.1 Council could agree the revised constitution as recommended to Council by the Standards Committee.

11.2 Council could amend and then adopt the revised constitution.

11.3 Council could reject the document in its entirety and provide guidance to the Constitutional Review Working Party on the changes they would like to see to the document.

12.0 Corporate Implications

12.1 Financial and VAT

12.1.1 The financial implications relate to the costs of Essex Legal Services which have already been budgeted for and the costs of printing the new Constitution.

12.2 Legal

12.2.1 Under the Local Government and Housing Act 1989 the Monitoring Officer is responsible for the operation of the Council's Constitution.

12.2.2 Under section 37 of the Local Government Act 2000, a local authority which is operating executive arrangements must prepare and keep up to date a document (referred to as their constitution) which contains:

- (a) Such information as the Secretary of State may direct,
- (b) A copy of the authorities standing orders for the time being,
- (c) A copy of the authority's code of conduct for the time being under section 51, and
- (d) Such other information (if any) as the authority consider appropriate.

A local authority must ensure that copies of their constitution are available at their principal office for inspection by members of the public at all reasonable hours. A local authority must supply a copy of their constitution to any person who requests a copy and who pays to the authority such reasonable fee as the authority may determine.

12.3 Corporate

The review of the Constitution has been undertaken as part of the action plan following the peer review by the Local Government Association.

12.4 Equity and Equalities

12.4.1 The document when adopted will be published in appropriate formats to comply with our public sector equality duties.

13.0 Recommendation

13.1 The Council to consider the revised parts of the Council's Constitution and adopt them with amendment if appropriate.

Future Meeting if applicable: N/A	Date:
-----------------------------------	-------

Contact Officer:	Tim Howes, Director of Corporate Governance and Monitoring Officer
Reporting to:	Madeline Homer, Chief Executive

Annex List

Annex 1	Summary and Explanation and Articles of the Constitution
Annex 2	Part 3 – Responsibility for Functions (Delegation Scheme)
Annex 3	Part 4 – Rules on Procedure
Annex 4	Changes to Access to Information Procedure Rules
Annex 5	Changes to Overview and Scrutiny Procedure Rules
Annex 6	Petitions from the Public
Annex 7	Protocol on Member/Officer Relations

Background Papers

Title	Details of where to access copy
<i>None</i>	<i>None</i>

Corporate Consultation Undertaken

Finance	Tim Willis Director of Corporate Resources
Legal	Tim Howes Director of Corporate Governance and Monitoring Officer